CAUSE NO. _____

RONALD COLEMAN *Plaintiff*,	§	IN THE DISTRICT COURT OF
VS.	§	HARRIS COUNTY, TEXAS
BAYLOR COLLEGE OF MEDICINE; BAYLOR ST. LUKE'S MEDICAL CENTER; CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER; ST. LUKE'S HEALTH SYSTEM CORPORATION; AND JEFFREY MORGAN, M.D. *Defendants*.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, RONALD COLEMAN, hereinafter sometimes referred to as Plaintiff, complaining of BAYLOR COLLEGE OF MEDICINE, BAYLOR ST. LUKE'S MEDICAL CENTER, CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER, ST. LUKE'S HEALTH SYSTEM CORPORATION, and JEFFREY MORGAN, M.D., hereinafter sometimes referred to as Defendants, and for cause of action would respectfully show unto the Court and Jury as follows:

I.
DISCOVERY LEVEL

1. Discovery in this case should be conducted under Level 3, pursuant to Rule 190.4 of the TEXAS RULES OF CIVIL PROCEDURE. Plaintiff respectfully requests that this Court enter an appropriate Scheduling Order so that discovery may be conducted pursuant to Level 3.

II.
REQUESTS FOR DISCLOSURE

2. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff requests

Defendants to disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the TEXAS RULES OF CIVIL PROCEDURE. Plaintiff specifically requests the responding party to produce responsive documents at the undersigned law offices within fifty (50) days of service of this request.

III.
JURISDICTION AND VENUE

3. Plaintiff affirmatively pleads that this Court has jurisdiction because the damages sought are in excess of the minimum jurisdictional limits of the Court. Furthermore, all of the causes of action asserted in this case arose in the State of Texas, and all of the parties to this action are either residents of the State of Texas or conduct business in this State in connection with the causes of action embraced by the claims in this lawsuit. Therefore, this Court has both subject matter and personal jurisdiction over all of the parties and all of the claims.

4. Venue is proper in Harris County, Texas under the general venue statute of TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1)(2)(3)(West 2007) because Harris County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred. Venue is also proper in Harris County since one or more of the defendants reside in, practice medicine in, or have their principal place of business and office in Harris County, Texas.

IV.
PARTIES

5. Plaintiff, RONALD COLEMAN, is a resident of Harris County, Texas.

6. Defendant, BAYLOR COLLEGE OF MEDICINE ("BCOM"), is a domestic nonprofit corporation duly existing and operating pursuant to law. BCOM may be served with process by the clerk of this court by mailing a copy of the citation, with the petition attached, via certified mail, to its registered agent, James Banfield, located at 1 Baylor Plaza, suite 106a, Houston, Texas 77030,

or wherever he may be found.

7. Defendant, BAYLOR ST. LUKE'S MEDICAL CENTER is a hospital duly existing and operating pursuant to law with its principal place of business in Harris County, Texas. This Defendant may be served with process by the clerk of this court by mailing a copy of the citation, with the petition attached, via certified mail, to its President, Gay Nord, located at 6720 Bertner Ave., Houston, Texas 77030, or wherever she may be found.

8. Defendant, CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER is a hospital duly existing and operating pursuant to law with its principal place of business in Harris County, Texas. This Defendant may be served with process by the clerk of this court by mailing a copy of the citation, with the petition attached, via certified mail, to its registered agent, CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever it may be found.

9. Defendant, ST. LUKE'S HEALTH SYSTEM CORPORATION, is a domestic entity operating pursuant to law with its principal place of business in Harris County, Texas. This Defendant may be served with process by the clerk of this court by mailing a copy of the citation, with the petition attached, via certified mail, to its registered agent, CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas, Texas 75201, or wherever it may be found.

10. Defendant, JEFFREY MORGAN, M.D., is a physician practicing medicine in Harris County, Texas. He may be served with process by the clerk of this court by mailing a copy of the citation, with the petition attached, via certified mail, to Baylor St. Luke's Medical Center, 6770 Bertner Avenue, C355A, Houston, Texas 77030, or wherever he may be found.

11. To the extent that any of the above-named Defendants are conducting business pursuant to a trade name or assumed name, then suit is brought against them pursuant to the terms of Rule 28

of the TEXAS RULES OF CIVIL PROCEDURE and Plaintiffs hereby demand that upon answering this suit, that they answer in their correct legal name and assumed name.

V.
FACTUAL BACKGROUND

12. "A great civilization is not conquered from without until it has destroyed itself from within." – Ariel Durant. To fully understand the gravity of the claims involved in this case that nearly cost Plaintiff, Ronald Coleman, his life, a brief history of the rise and fall of one of the nation's top transplant programs is necessary. Like so many that came before him, Mr. Coleman was ecstatic when a new heart had become available for him in October of 2016. Mr. Coleman had spent the previous two years living with the use of a Left Ventricular Assist Device ("LVAD"), an implantable device used to pick up the slack of an ailing heart by pumping blood throughout the body. Adding to Mr. Coleman's excitement was that his heart transplant would be performed at Baylor St. Luke's Medical Center ("St. Luke's"), a joint venture equally owned by BCOM and St Luke's Health System Corporation – a subsidiary of Catholic Health Initiatives, one of the nation's largest healthcare systems. For many years, the St. Luke's transplant program, originally led by legendary surgeon, Dr. Denton Cooley, and later his protégé Dr. O. H. Bud Frazier, was world renown.

13. Mr. Coleman had been a patient at St. Luke's previously. He had seen the advertising by St. Luke's where they told the public about the hospital's world renown transplant program and its and success. Mr. Coleman was convinced he was in the right place. Mr. Coleman was unaware of what was really going on behind the scenes at the hospital where he chose to be and the surgeon he chose to perform his heart transplant.

14. On May 16, 2018, The Houston Chronicle and ProPublica published an article which

eroded the rosy picture St. Luke's, BCOM and St. Luke's Health System Corporation had been painting for patients like Mr. Coleman.[1] The article indicated that "in recent years, the famed program has performed an outsized number of transplants resulting in death or unusual complications, has lost several top physicians, and has scaled back its ambition for treating high-risk patients, all the while marketing itself based on its storied past…" According to the article "twice as many St. Luke's patients died within a year as would have been expected" and that the once legendary program was ranked near the bottom nationally according to the most recent published data. Further, the article indicates that between mid-2016 and mid-2017, the time when Mr. Coleman received his heart transplant, the length of stay for heart transplant patients was the third longest of 125 programs in the country.

15. In 2015, after an alarming amount of transplant patients' deaths, St. Luke's and BCOM hired Defendant, Jeffrey Morgan, M.D. to be its new surgical director. According several articles written on the woes of the St. Luke's transplant program, Dr. Morgan was chosen for his academic rather than surgical experience. Short into his tenure, Dr. Morgan's lack of skill became apparent when he sowed shut one of two major veins that carry blood back to the heart in a patient during one of his first transplant surgeries at St. Luke's. The patient died a few weeks later. In another patient's transplant a year later, Dr. Morgan stitched through the other major vein, according to the patient's cardiologist. This error led to weeks of follow-up operations, a three-month hospital stay, and kidney failure.

16. A hiring committee at St. Luke's, led by Dr. Billy Cohn, made the decision to hire Dr.

[1] Mike Hixenbaugh and Charles Ornstein, *Heart Failure*, Houston Chronicle (May 16, 2018), https://www.houstonchronicle.com/news/investigations/article/Heart-Failure-patients-suffer-at-St-Lukes-Houston-12916224.php

Morgan despite his lack of surgical experience. Dr. Morgan had only been the lead surgeon in just 18 heart transplants in the five years prior to being hired as the head of St. Luke's transplant program. Journalists for The Houston Chronicle and ProPublica spoke to several of Dr. Morgan's colleagues who eagerly shared the pervasive and widely known errors that Dr. Morgan had made and continued to make after his hire. One of these colleagues, Dr. Roberta Bogaev, asked administrators to commission an external review in late 2016 and was quoted as saying, "It becomes very ethically challenging to recommend transplant if you don't have that confidence level in your surgeon." Dr. Bogaev also expressed other concerns that the hospital's loss of many experienced nurses and specialists following CHI's acquisition – including infectious disease, critical care and pathology – likely led to poorer transplant outcomes. Another colleague, Dr. Deborah Meyers, who also happened to be Mr. Coleman's cardiologist, was quoted as saying, "I had multiple conversations with multiple administrators during my tenure who were unwilling to get an external review to address the problems and unwilling to make substantial changes." Dr. Meyers wasn't finished with her criticisms of Dr. Morgan and St. Luke's failure to address the severe issues that affected patient safety. In a letter obtained by CBS News after the Chronicle/ProPublica article was published, Dr. Meyers wrote to St. Luke's president, Gay Nord, in which she indicated the following:

> In my opinion the shocking story of the Baylor St. Luke's CHI transplant program is one of greed, careerism, corporate takeovers, appalling administrative oversight, failure of leadership, poor hiring practices, completely avoidable lawsuits, and the inevitable public distortions of their underlying mission, all of which have occurred as medicine has become perverted into "big business."
>
> In the era of corporate medicine patient care has been reduced to "patient volume" and "RVUs" (relative value units). "Profit" is euphemistically called "margin" and the relentless focus on the margin and patient volume, rather than on the individual patient and the development of patient centered programs has driven much of the poor

decision-making that has resulted in the abysmal failures highlighted by the article.[2]

17. Despite the abundance of mistakes, greed, and compromises to patient safety going on in the background in 2016, Defendants St. Luke's, BCOM and St. Luke's Health System Corporation continued to misrepresent the quality of its transplant program in an effort to drive "patient volume" and obtained the desired "margin," to convince patients like Mr. Coleman he was at the right place. In June 2018, The Centers for Medicare and Medicaid services announced it would cut off Medicare funding for heart transplants at St. Luke's after concluding the hospital had not adequately addressed many of the issues it was facing. Around that time, St. Luke's put its transplant program on a 14-day hiatus. Although St. Luke's and BCOM claimed at that time to not have identified "systematic issues related to the quality of the program," in October 2018, Dr. Morgan was demoted and replaced.[3]

VI.
CAUSES OF ACTION

COUNT I: NEGLIGENCE

18. On October 31, 2016, Mr. Coleman underwent a heart transplant, performed by Dr. Morgan. As discussed above, Mr. Coleman relied on the use of an LVAD to survive while he awaited a donor heart. An LVAD system is implanted under the skin and is connected to the heart and a pump. The pump is implanted below the heart, in the upper abdomen. One tube connects to the heart and the pump, while another tube connects to the aorta and the pump, allowing blood to be carried back to a person's aorta, the major blood vessel that distributes blood to the arteries

[2] Letter from Dr. Deborah Meyers as published in CBS News, *Widow seeks "truth" amid patient deaths at renowned heart transplant program* (June 12, 2018) available at https://www.cbsnews.com/news/baylor-st-lukes-medical-center-houston-renowned-heart-transplant-program-suspended.

[3] Mike Hixenbaugh and Charles Ornstein, *St. Luke's in Houston replaces heart transplant program surgical director*, Houston Chronicle (October 19, 2018), https://www.houstonchronicle.com/news/investigations/article/St-Luke-s-in-Houston-replaces-heart-transplant-13320858.php

throughout a person's body. To power the pump, a "drive line", or lead wire, is attached to the pump that exits the skin around the abdominal area and connects to an outside battery and system controller. As with any LVAD patient undergoing a heart transplant, Mr. Coleman's LVAD had to be carefully removed.

19. According to Dr. Morgan's operative note, after performing a sternotomy to open the chest, his attention was turned to mobilizing Mr. Coleman's native heart for removal. Mobilization of the heart involved Dr. Morgan dissecting adhesions and the diaphragm. Dr. Morgan indicated that "[a]fter completion of the resection of the recipient heart, the valve was mobilized circumferentially and the drive line, opened diaphragm, removed LVAD, was mobilized extensively and cut." Dr. Morgan then prepared the donor heart for implantation. The donor heart was implanted. Mr. Coleman was taken off of bypass but had to be put back on shortly thereafter because of bleeding from the back of the heart. Eventually, bypass was weaned, and Mr. Coleman could be closed up. During this process, Dr. Morgan's operative note indicates the "[d]iaphragm repaired with 0-Vicryl sutures to close the defect. Once we reached satisfactory mediastinal hemostasis, right and left pleural tubes, anterior mediastinal chest tube, posterior mediastinal Blake placed." Dr. Morgan further indicated "[t]he drive line was mobilized using [electrocautery] from the external aspect and we circumferentially mobilized. At this point in time, the drive line site was packed and the wire was removed from the groin." Mr. Coleman was transferred to the intensive care unit after completion of the transplant.

20. Postoperatively, on November 1, 2016, Mr. Coleman's white blood cell count was over twice the normal limit at 23,800 cells per cubic milliliter of blood. His creatine levels were elevated as well at 1.37. By the following day, his white blood cell count had gone up to 30,400 and his

heart rate was 122 beats per minute. Nevertheless, Mr. Coleman was transferred out of the ICU and into a room on the regular floor. Over the next several days, Mr. Coleman's white blood cell count improved slightly, but he remained critically anemic with a hemoglobin level as low as 7.6 and his creatinine levels continued to rise. Cultures were taken which allegedly came back negative for infection. By November 8, 2016, Mr. Coleman was noted to have a fever of 101.7, and his chest tube drainage was noted to be thick and brownish. Mr. Coleman was transferred back to the ICU "for complex pleural effusion and sepsis."

21. Beginning at 1235 hours on November 8, 2016, Mr. Coleman underwent a CT of the chest, abdomen and pelvis, without contrast. The radiologist did not find any evidence of bowel obstruction or abnormal bowel wall thickening but indicated his evaluation was limited due to the lack of IV and oral contrast. A chest X-ray was also performed which revealed new moderate right pleural effusion. Dr. Morgan saw Mr. Coleman later that day at 1706 hours. Dr. Morgan's only plan at that time consisted of continuing antibiotics, continue monitoring the patient and to insert a chest tube to the right pleural cavity.

22. On November 9, 2016, Mr. Coleman was seen by his cardiologist, Dr. Deborah Meyers, whose progress note indicated that Mr. Coleman's chest tube from the previous day "appears feculent," suggesting that fecal matter was in his chest tube. A plan was devised for re-exploration of Mr. Coleman's chest to check for infection with Dr. Morgan set to perform the procedure. In his operative note, Dr. Morgan indicated that after entering the chest through the prior incision and placing a chest retractor, he evacuated mediastinal fluid, and noted thick peel around Mr. Coleman's lung, consistent with thick purulent fluid. Dr. Morgan did not explore the root of the problem, a problem he created by his negligence as later discussed in this petition.

23. Even after the evacuation of fluid and strong doses of antibiotics, Mr. Coleman continued to get worse. By November 10, 2016, Mr. Coleman's white blood cell count went up to 34,400, his creatinine up to 2.13, and had significant chest tube output. Cultures taken during the previous exploration showed Mr. Coleman was positive for E-coli. His blood pressure continued to drop. Despite these ominous signs, Dr. Morgan's plan remained to wait and see, while continuing antibiotics. By November 11, 2016, Mr. Coleman's white blood cell count had gone up to 37,800 and his creatinine to 4.19, both nearly four times the normal limits. His body fluid cultures came back positive for both E-coli and alpha-hemolytic streptococcus. Susan Burgert, M.D., an infectious disease doctor, indicated in her progress note on November 11, 2016 that an upper GI endoscopy should be considered to evaluate for bowel erosion or fistula and to repeat the CT of the chest, abdomen and pelvis.

24. On November 12, 2016, a repeat CT of the chest, abdomen and pelvis was performed. Of note, along with numerous fluid collections, the radiologist indicated there was a "small tubular radiopaque foreign body within the right upper abdominal wall along the expected course of the previously removed LVAD drive line." The following day, Mr. Coleman was seen by Dr. Bergert, who noted that Mr. Coleman's white blood cell count had gone up to 54,000, his chest tube drainage contained thick brownish fluid, and multiple organisms were growing within his chest tube and his body. Dr. Bergert also indicated that a "portion of drive line appears to have been left in abd wall."

25. The next sequence of events is important to understand to fully grasp the actions of Dr. Morgan and his care and treatment of Mr. Coleman. On November 13, 2016, Mr. Coleman was set to undergo an additional re-exploration of his chest. According to the anesthesia records, the

procedure began on November 13, 2016 at 1211 hours. Dr. Morgan was the surgeon performing the exploration. The only people present during this procedure were Dr. Morgan, Dr. Masahiro Ono as the first assistant, and Dr. Farooq Mirza, a resident and second assistant. Dr. Morgan once again reopened the previous incision and placed a chest retractor. This time however, Dr. Morgan discovered the reason why Mr. Coleman had become septic and why his health had dramatically declined – his transverse colon had been perforated. A general surgeon named Dr. George Van Buren was called to perform a colon resection. When Dr. Van Buren arrived to the OR, Mr. Coleman's chest and diaphragm were already open. Of note, Dr. Van Buren discovered that Mr. Coleman's transverse colon had been "pexied and sutured to the diaphragmatic closure." In other words, Dr. Morgan had stitched Mr. Coleman's colon to his diaphragm when he was attempting to suture the diaphragm closed during the heart transplant procedure. Similar to the previous patients who had their arteries sown shut, Dr. Morgan had once again displayed his lack of skill in suturing Mr. Coleman's colon to his diaphragm. As Dr. Van Buren continued to dissect the colon away from the diaphragm, he noticed a "full-thickness opening of the colon which was draining into an abscess cavity." Dr. Van Buren had to resect the perforated portion of Mr. Coleman's colon, as well as the area of colon surrounding the perforation which had become significantly inflamed.

26. Neither Dr. Morgan's operative report, nor Dr. Van Buren's operative report, make any mention of the foreign body which had been identified during the November 12, 2016 CT scan. Upon information and belief, Dr. Morgan removed the foreign body prior to Dr. Van Buren entering the operating room, and failed to record it in his operative note, or send it to pathology.

27. Even after Mr. Coleman's colon had been repaired, his prognosis was poor. He continued to suffer from infection that had now spread to his chest wound. He required placement of a wound

vac and several washouts in an attempt to treat his ongoing infection. He remained in the hospital until January 10, 2017.

28. When this case is tried, the evidence will show that Dr. Morgan breached the standard of care with respect to his care and treatment of Plaintiff; Dr. Morgan was negligent in his care and treatment of Plaintiff; and that such breach of the standard of care and his negligence was a proximate and/or medical cause of Plaintiff's resulting injuries and damages. Specifically, Dr. Morgan breached the standard of care for a cardiothoracic surgeon by suturing Mr. Coleman's colon to his diaphragm, causing a perforation of the colon. This perforation allowed fecal matter to flow into Mr. Coleman's abdomen and chest tube, leading to infection, sepsis, and nearly costing Mr. Coleman his life. Additionally, Dr. Morgan breached the standard of care for a cardiothoracic surgeon in failing to recognize Mr. Coleman's colon perforation in a timely manner. Despite clear signs that Mr. Coleman had a bowel issue, such as the fact that his white blood cell count continued to skyrocket, his kidneys were failing, his chest tube contained "feculent" matter as early as November 8, 2016, and his severe sepsis, Dr. Morgan did not discover the perforation until November 13, 2016. This failure to recognize the perforation becomes even more troubling given the fact that Dr. Morgan performed an exploration on November 9, 2016, but instead of doing a thorough exploration, Dr. Morgan simply evacuated and cultured fluid. Further, in all reasonable medical probability, Dr. Morgan failed to remove all of the drive line of Mr. Coleman's LVAD when he performed the heart transplant procedure on October 31, 2016. This was a clear deviation of the standard of care for a cardiothoracic surgeon and an additional medical cause of Mr. Coleman's ongoing infection. When this case is tried, the evidence will show that despite the fact that this foreign body was identified by a CT scan on November 12, 2016, there is no further

mention of the foreign body in Mr. Coleman's chart, when it was removed, nor what it was. The evidence will further show that Dr. Morgan was the first person to open Mr. Coleman's chest after the foreign body had been identified and that reasonable jurors could believe that Dr. Morgan removed the foreign body and deliberately attempted to conceal his breach of the standard of care of leaving the foreign body in Mr. Coleman to begin with.

29. In addition to the negligence by Dr. Morgan, when this case is tried, the evidence will show that one or more of the nurses, assistants, and/or technicians involved in the care and treatment of Mr. Coleman were negligent, and that such negligence was a proximate cause of Mr. Coleman's injuries.

30. At all material times to this cause, Dr. Morgan, was acting within their course and scope of their employment and/or agency as the employees, servants, agents, and/or alter egos of BAYLOR COLLEGE OF MEDICINE; BAYLOR ST. LUKE'S MEDICAL CENTER; CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER; and/or ST. LUKE'S HEALTH SYSTEM CORPORATION. Therefore, these Defendants are liable under the doctrine of *respondeat superior, alter ego*, apparent and/or ostensible agency, and/or agency by estoppel as those terms are defined and applied under the laws and statutes of the State of Texas.

31. At all material times to this cause, the nurses, assistants, and/or technicians at St. Luke's and/or BCOM, were acting within their course and scope of their employment and/or agency as the employees, servants, agents, and/or alter egos of BAYLOR COLLEGE OF MEDICINE; BAYLOR ST. LUKE'S MEDICAL CENTER; CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER; and/or ST. LUKE'S HEALTH SYSTEM CORPORATION. Therefore, these Defendants are liable under the doctrine of *respondeat*

superior, *alter ego*, apparent and/or ostensible agency, and/or agency by estoppel as those terms are defined and applied under the laws and statutes of the State of Texas.

COUNT II: NEGLIGENT/MALICOUS CREDENTIALING

32. Plaintiff refers to each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

33. When this case is tried, the evidence will show that BCOM, St. Luke's, CHI St. Luke's Health Baylor College of Medicine Medical Center, and/or St. Luke's Health System Corporation breached the standard of care in credentialing Dr. Morgan, extending and renewing his privileges to perform heart transplant surgeries, failing to adequately and timely review his privileges, or otherwise allowing him to perform Mr. Coleman's surgery. The evidence will show that Defendants knew that Dr. Morgan was a danger to patients by the date of Mr. Coleman's surgery, and further that Defendants maliciously allowed Dr. Morgan to continue performing heart surgeries without appropriate precautions, ignoring the concerns of other physicians and staff. The evidence will show Defendants deliberately placed its false prestige and profits over patient safety. The evidence will further show that these actions proximately caused Mr. Coleman's injuries and damages.

COUNT III: FRAUD

34. Plaintiff refers to each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

35. When this case is tried, the evidence will show that BCOM, St. Luke's, CHI St. Luke's Health Baylor College of Medicine Medical Center, and/or St. Luke's Health System Corporation willfully and knowingly made a number of false representations regarding the experience and

expertise of the heart transplant program at St. Luke's as well as patient outcomes with the intent of inducing the public to turn to them for care and treatment. Mr. Coleman relied on the Defendants' representations and did allow Defendants to treat him, however, he would not have done so had he been aware of the false representations. Defendants' false representations of material fact that Mr. Coleman relied upon were a proximate cause of his injuries and damages. Because Defendants knew the representations were false at the time they were made, the representations were grossly negligent, fraudulent, malicious, and constitute conduct for which the law allows the imposition of exemplary damages.

COUNT IV: NEGLIGENT MISREPRESNTATION

36. Plaintiff refers to each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

37. Pleading in the alternative, when this case is tried, the evidence will show that BCOM, St. Luke's, CHI St. Luke's Health Baylor College of Medicine Medical Center, and/or St. Luke's Health System Corporation provided information in the course of its business regarding the experience and expertise of their heart transplant programs as well as patient outcomes, the information supplied was false, Defendants did not exercise reasonable care in obtaining or communicating the information, that Mr. Coleman reasonably relied on that information, and Mr. Coleman suffered injuries and damages proximately caused by his reliance on the false information.

COUNT V: DTPA VIOLATIONS

38. Plaintiff refers to each and every preceding paragraph and incorporates those paragraphs as though set forth in full in this cause of action.

39. Ronald Coleman is a consumer entitled to bring this action for relief under the Texas Deceptive Trade Practices – Consumer Protection Act (the "DTPA"). BCOM, St. Luke's, CHI St. Luke's Health Baylor College of Medicine Medical Center, and/or St. Luke's Health System Corporation engaged in actions that violate the DTPA by making false and misleading representations of material fact regarding the experience and expertise of the heart transplant program at St. Luke's as well as patient outcomes with the intent of inducing the public and consumers like Ronald Coleman, to turn to St. Luke's for care and treatment. Mr. Coleman detrimentally relied on the false, misleading, or deceptive acts of Defendants and Defendants' false, misleading and deceptive acts were a producing cause of Mr. Coleman's injuries and damages.

40. When this case is tried, the evidence will show that Defendants violated the DTPA by engaging in unconscionable conduct and/or an unconscionable course of conduct as those terms are defined and applied under the laws of the State of Texas. The evidence will show that Defendants engaged in "an act or practice, that, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree."

41. When this case is tried, the evidence will show that Defendants conduct was committed knowingly and intentionally. Defendants were actually aware, at the time of the conduct, of the falsity, deception, and unfairness of the conduct about which Plaintiff complains. As a direct result of Defendants' knowing and intentional conduct, Plaintiff suffered physical injuries and mental anguish damages. In light of Defendants' conduct being committed knowingly and intentionally, Plaintiff is entitled to seek the trebling of his economic and mental anguish damages, as well as attorney's fees, in accordance with the DTPA.

VII.
DAMAGES

42. There are certain elements of damage, recognized in law, that the Plaintiff, Ronald Coleman, is entitled to have the jury separately consider in a case of this nature. Those elements of damage include the following:

a. the physical pain that Ronald Coleman has suffered from the date of the occurrence in question up to the time of trial;

b. the mental anguish that Ronald Coleman has suffered from the date of the occurrence in question up to the time of trial; and

c. the reasonable and necessary medical expenses incurred by Ronald Coleman from the date of the occurrence in question up to the time of trial;

43. From the time of trial of this case, the elements of damage to be separately considered, which Plaintiff, Ronald Coleman, will sustain in the future, beyond the time of trial, are such of the following elements that are shown by a preponderance of the evidence:

a. the physical pain that Ronald Coleman will suffer in the future beyond the time of trial; and

b. the mental anguish that Ronald Coleman will suffer in the future beyond the time of trial;

44. The wrongful conduct of Defendants described herein constitutes gross negligence and/or willful, malicious and intentional conduct, so as to justify the imposition and recovery of punitive damages in an amount sufficient to punish and deter Defendants and other similar facilities from such conduct in the future.

45. The wrongful conduct of Defendants described herein also was committed knowingly and intentionally, as defined and applied under the DTPA. Therefore, Plaintiff is entitled to seek the trebling of his economic and mental anguish damages, as well as attorney's fees, in accordance with the DTPA.

46. All of the cited elements of damages have been proximately caused by the negligent acts and omissions of the Defendants, for which this suit is brought. Because of the above and foregoing, Ronald Coleman has been damaged, and will be damaged, in a sum greatly in excess of the minimum jurisdictional limits of this Honorable Court. The Plaintiff seeks monetary relief in excess of $1,000,000.

VIII.
COMPLIANCE WITH TEXAS CIVIL PRACTICE & REMEDIES CODE §74.051

47. This is a health care liability claim as defined in Tex. Civ. Prac. & Rem. Code §74.001(a)(13) (West 2007). Plaintiff has complied with Texas Civil Practice & Remedies Code §74.051 and §74.052, by giving written notice to one or more of the Defendants and/or potential Defendants, via certified mail, return receipt requested.

IX.
JURY TRIAL

48. Plaintiff respectfully requests a jury trial in accordance with the applicable provisions of the Texas Rules of Civil Procedure, and have tendered the appropriate jury fee herewith.

X.
PRAYER

49. For the above reasons, Plaintiff prays that the Defendants be cited to appear and answer herein, and that upon a trial of this case, the Plaintiff have judgment against the Defendants, jointly and severally, for his damages as set forth herein, prejudgment interest, post-judgment interest, costs of court, and for such other further relief, both in law and equity, to which the Plaintiff may show himself to be justly entitled.

[signature page follows]

Respectfully submitted,

THE LEWIS LAW FIRM

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